

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

AMERICAN GUARANTEE & LIABILITY CO.)	
And ZURICH AMERICAN INSURANCE)	
COMPANY,)	
)	
Plaintiffs,)	
)	
v.)	Cause No.:
)	
MAXIM CONSTRUCTION, INC.,)	
)	
)	
Serve:)	
Registered Agent)	
DEBORAH SUE POLITTE)	
611 SPRUCE ST PO BOX 11)	
BISMARCK MO 62624)	
)	
Defendant.)	

COMPLAINT

COME NOW plaintiffs American Guarantee and Liability Co. and Zurich American Insurance Co., by and through their attorneys, Brown & James, P.C., and for their Complaint against Defendant Maxim Construction, Inc., state as follows:

PARTIES

1. Plaintiff American Guarantee & Liability Co. is a New York corporation duly licensed to do business and is transacting business in the State of Missouri.
2. Plaintiff Zurich American Insurance Co. is a New York corporation duly licensed to do business and is transacting business in the State of Missouri.
3. Defendant Maxim Construction Co. is a corporation duly organized and existing under the laws of the State of Missouri and that regularly and consistently transacts business in the State of Missouri.

VENUE AND JURISDICTION

4. Defendant is subject to the jurisdiction of this Court by virtue of its business dealings and transactions in the Eastern District of Missouri and by having caused injuries through its acts and omissions within said District.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a) in that the events giving rise to the claims herein set forth occurred in this Judicial District.

6. Plaintiffs' claims for damages against Defendant exceed Seventy-Five Thousand Dollars (\$75,000) exclusive of interest, and there is complete diversity of citizenship of the parties to this matter. Thus, this Court has jurisdiction over this matter pursuant to 28 U.S.C. §1332(a).

FACTUAL ALLEGATIONS

7. Plaintiffs were the providers of insurance policies to Defendant. On or about September 22, 2007, Plaintiffs and Defendant entered into contracts for insurance in which Defendant agreed, among other things, to pay premiums to Plaintiffs for insurance coverage. A copy the contract of insurance issued by Plaintiff American Guarantee & Liability Co. is attached hereto as Plaintiffs' Exhibit 1. A copy of the contract of insurance issued by Plaintiff Zurich American Insurance Co. is attached hereto as Plaintiffs' Exhibit 2.

8. The policy periods included in the coverages for each policy commenced September 22, 2007, and concluded September 22, 2008.

9. In return for the insurance coverages provided by Plaintiffs, Defendant agreed to pay insurance premiums. These premiums were to be based, in part, upon an insurance audit to be performed on behalf of Plaintiffs.

10. During the above-described time period, Plaintiffs provided insurance coverage to Defendant.

11. The audit, performed by Plaintiffs as agreed, determined that Defendant owed plaintiffs additional premiums. Specifically, defendant owed One Hundred Ninety Five Thousand Six Hundred Thirty-Two Dollors (\$195,632.00) in premiums under Plaintiffs' Exhibit 1 and Twelve Thousand Nine Hundred Seventy-Four Dollors (\$12,974.00) in premiums under Plaintiffs' Exhibit 2.

12. Defendant has been advised of the audit and amounts owed to Plaintiffs. Nonetheless, Defendant failed to pay the total premiums to Plaintiffs, as determined by the audit.

COUNT I – Breach of Contract – American Guarantee & Liability Co.

Comes now plaintiff American Guarantee & Liability Co., and for Count I of its Complaint against Defendant Maxim Construction, Inc. states as follows:

13. Plaintiff American Guarantee & Liability Co. hereby alleges, adopts and incorporates by reference each and every allegation contained in Paragraphs 1-12 of this Complaint as if fully set forth herein.

14. Despite continuous demand made by Plaintiff, Defendant has failed and refused, and continues to fail and refuse, to pay the outstanding amount of One Hundred Ninety Five Thousand Six Hundred Thirty-Two Dollors (\$195,632.00), which is currently due and owing to Plaintiff, plus interest at a rate fixed by law.

15. As a result of Defendant improperly failing to pay the premiums owed to Plaintiff and Defendant's continued refusal to pay the monies due Plaintiff, Defendant has breached the contract of insurance between Plaintiff and Defendant.

16. That as a direct and proximate result of the aforementioned breach of contract, Plaintiff has sustained damages in the approximate amount of One Hundred Ninety Five Thousand Six Hundred Thirty-Two Dollors (\$195,632.00), plus interest.

17. Plaintiff has complied with all aspects of the insurance agreement, performed all obligations required by the insurance agreement and, further, has performed all conditions precedent.

WHEREFORE, plaintiff American Guarantee & Liability Co. prays this Court to enter judgment in its favor in the amount of One Hundred Ninety Five Thousand Six Hundred Thirty-Two Dollors (\$195,632.00) together with pre-judgment and post-judgment interest, costs, and attorneys' fees herein expended.

COUNT II – Breach of Contract – Zurich American Insurance Co.

Comes now plaintiff Zurich American Insurance Co., and for Count II of its Complaint against Defendant Maxim Construction, Inc. states as follows:

18. Plaintiff Zurich American Insurance Co. hereby alleges, adopts and incorporates by reference each and every allegation contained in Paragraphs 1-12 of this Complaint as if fully set forth herein.

19. Despite continuous demand made by Plaintiff, Defendant has failed and refused, and continues to fail and refuse, to pay the outstanding amount of Twelve Thousand Nine Hundred Seventy-Four Dollors (\$12,974.00) which is currently due and owing to Plaintiff, plus interest at a rate fixed by law.

20. As a result of Defendant improperly failing to pay the premiums owed to Plaintiff and Defendant's continued refusal to pay the monies due Plaintiff, Defendant has breached the contract of insurance between Plaintiff and Defendant.

21. That as a direct and proximate result of the aforementioned breach of contract, Plaintiff has sustained damages in the approximate amount of Twelve Thousand Nine Hundred Seventy-Four Dollars (\$12,974.00).

22. Plaintiff has complied with all aspects of the insurance agreement, performed all obligations required by the insurance agreement and, further, has performed all conditions precedent.

WHEREFORE, plaintiff Zurich American Insurance Co. prays this Court to enter judgment in its favor in the amount of Twelve Thousand Nine Hundred Seventy-Four Dollars (\$12,974.00) together with pre-judgment and post-judgment interest, costs, and attorneys' fees herein expended.

Respectfully Submitted,



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